

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS),

Respondent.

Case No. SA-CE-1452-S

PERB Decision No. 1848-S

August 9, 2006

Appearance: Bradley W. Stevens, Attorney, for California Correctional Peace Officers Association.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California Correctional Peace Officers Association (CCPOA) of a Board agent's partial dismissal (attached) of an unfair practice charge. The charge alleges that the State of California (Department of Corrections) violated the Ralph C. Dills Act (Dills Act)¹ by engaging in bad faith bargaining, unilaterally changing staffing levels and refusing to provide requested information. CCPOA alleged that this conduct constituted a violation of Dills Act section 3519(c).

The Board has reviewed the unfair practice charge, the amended unfair practice charge and attached documents, the warning and partial dismissal letters, the Board agent's complaint,

¹The Dills Act is codified at Government Code section 3512, et seq.

and CCPOA's appeal of the partial dismissal. In light of its review, the Board finds the Board agent's partial dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-1452-S is hereby PARTIALLY
DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8385
Fax: (916) 327-6377



May 2, 2006

Bradley W. Stevens
Staff Legal Counsel
CCPOA
6041 N First Street
Fresno, CA 93710

Re: California Correctional Peace Officers Association v. State of California (Department of Corrections)
Unfair Practice Charge No. SA-CE-1452-S
PARTIAL DISMISSAL

Dear Mr. Stevens:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 21, 2004. The California Correctional Peace Officers Association alleges that the State of California (Department of Corrections) violated the Ralph C. Dills Act (Dills Act)¹ by engaging in bad faith bargaining, unilaterally changing staffing levels and refusing to provide requested information.

I indicated in the attached letter dated April 13, 2006, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that unless you amended the charge to state a prima facie case or withdrew it prior to April 21, 2006, the charge would be dismissed. An amended charge was filed on April 21, 2006.

As amended the charge alleges that in 2002, the North Kern State Prison planned to temporarily relocate its infirmary to a housing unit while the infirmary was remodeled, hi July 2002, CCPOA and the Department bargained the impacts of the temporary relocation.

On September 11, 2003, the Department notified CCPOA of the proposed activation of the updated Correctional Treatment Center (CTC). Thereafter, CCPOA demanded to bargain the impact of the return to the CTC.

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

In September 2003, the parties held a meet and confer session. The Department was represented by Labor Relations Officer Lawrence McCarthy. The charge alleges, "Mr. McCarthy was removed from the table and an entire day of negotiations was lost."

On March 9, 2004, the Department requested that CCPOA continue to meet with its representatives for the purpose of passing proposals. The proposals would then be faxed to a Labor Relations Deputy Director for review. Six bargaining sessions were held utilizing this time-consuming procedure. However, the parties managed to reach 21 tentative agreements.

Beginning on April 20, through April 22, 2004, Labor Relations Officer Sandra Samaniego attended the bargaining sessions with the intention of completing negotiations. Within 60 minutes Ms. Samaniego attempted to reject all 21 tentative agreements, including five Department proposals previously accepted by CCPOA. Only after Ms. Samaniego caucused with Department representatives did she sign the tentative agreements. However, Ms. Samaniego did reject the ground rules previously agreed to by Mr. McCarthy.

Over the three day period, Ms. Samaniego rejected all CCPOA proposals without comment or discussion and agreed only to Department initiated proposals.

Prior to the temporary relocation of the infirmary, the parties had negotiated a staffing level associated with administration segregation (ad-seg) inmate patients. During the April 22, 2004 bargaining session, Ms. Samaniego ordered that all posted custody positions associated with ad-seg inmate patients be eliminated. After two hours of argument, Ms. Samaniego volunteered that the positions were not budgeted.

In response to the claim that the positions were not budgeted, CCPOA verbally requested a document called either a Monthly Budget Plan or Budget Summary Plan. Ms. Samaniego responded that the document was immaterial to the parties' discussion and refused to provide the information.

Also prior to the relocation of the infirmary, CCPOA and the Department had agreed to a staffing level for the supervision of Mental Health Crisis Bed (MHCB) inmates. On April 22, 2004, Ms. Samaniego discontinued the hiring of all staffing for MHCB inmates.

The effect of the reduction in staffing levels for these two types of positions was an increase in safety concerns for correctional officers.

On April 22, 2004, Ms. Samaniego declared the parties were at impasse. A mediation session was held on June 30, 2004.

The charge alleges, in part, of that the Department unilaterally changed the staffing levels assigned to the ad-seg and MHCB inmate patients.

In determining whether a party has violated the Dills Act section 3519(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and

the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

Staffing levels reflect management's decision regarding the level of services to be provided and are not a subject within the scope of representation. (State of California (Department of Corrections) (2000) PERB Decision No. 1381-S.) However, the effects of a decision to change staffing levels, including safety issues, are negotiable. (Ibid.) The burden is on the union to demonstrate that *it* made a request to bargain the effects of a nonnegotiable decision. (Sylvan Union Elementary School District (1992) PERB Decision No. 919.)

During the bargaining session held on April 22, 2004, Ms. Samaniego ordered all posted custody positions associated with ad-seg inmate patients be eliminated. She also discontinued the hiring of all staffing for MHCB inmates. The charge alleges that the unilateral change in staffing levels raised safety concerns for correctional officers.

We previously discussed the staffing level allegations and a union's obligation to demand effects bargaining on February 10 and March 4, 2005. However, as amended, there is no evidence that the Union demanded to bargain the effects of the change in staffing levels or submitted proposals addressing safety concerns. Rather, the charge alleges that the Union opposed the decision to modify staffing levels. Because the decision to change staffing levels is not negotiable, the charge does not demonstrate a prima facie case of an unlawful unilateral change in staffing levels. Nor does the charge establish that CCPOA demanded to bargain effects and that the Department refused to negotiate the effects of the decision to change staffing levels. Accordingly, the allegations that the Department unilaterally changed staffing levels related to ad-seg and MHCB inmate patients are dismissed.

Right to Appeal

Pursuant to PERB Regulations,² you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulation 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

SA-CE-1452-S

May 2, 2006

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By _____
Robin W. Wesley
Regional Attorney

Attachment

cc: Edmund K. Brehl

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
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April 13, 2006

Bradley W. Stevens
Staff Legal Counsel
CCPOA
6041 N First Street
Fresno, CA 93710

Re: California Correctional Peace Officers Association v. State of California (Department of Corrections)
Unfair Practice Charge No. SA-CE-1452-S
WARNING LETTER

Dear Mr. Stevens:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 21, 2004. The California Correctional Peace Officers Association alleges that the State of California (Department of Corrections) violated the Ralph C. Dills Act (Dills Act)¹ by engaging in bad faith bargaining, unilaterally changing staffing levels and refusing to provide requested information.

We have discussed this charge on several occasions, including February 10, March 4, and December 7, 2005. During each conversation, you stated that you intended to file an amended charge to address some of the issues we discussed. In a letter to you dated February 10, 2006, I again reminded you that I had not received an amended charge. To date, an amended charge has not been submitted. Therefore, I will address the charge as filed.

In 2002, the North Kern State Prison planned to temporarily relocate its infirmary to a housing unit while the infirmary was remodeled. In July 2002, CCPOA and the Department bargained the impacts of the temporary relocation.

On September 11, 2003, the Department notified CCPOA of the proposed activation of the updated Correctional Treatment Center (CTC). Thereafter, CCPOA demanded to bargain the impact of the return to the CTC.

On an unspecified date, the parties held a meet and confer session. The Department was represented by Labor Relations Officer Lawrence McCarthy. The charge alleges, "Mr. McCarthy was removed from the table and an entire day of negotiations was lost."

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

The Department requested that CCPOA continue to meet with its representatives for the purpose of passing proposals. The proposals would then be faxed to a Labor Relations Deputy Director for review. Six bargaining sessions were held utilizing this time-consuming procedure. However, the parties managed to reach 21 tentative agreements.

On March 9, 2004, Labor Relations Officer Sandra Samaniego attended the bargaining session with the intention of completing negotiations. Within 60 minutes Ms. Samaniego had rejected the ground rules and all 21 tentative agreements, including five Department proposals previously accepted by CCPOA. Ms. Samaniego ultimately signed the five Department proposals after she was reminded that they were submitted by the Department and CCPOA had accepted them without modification.

Prior to the temporary relocation of the infirmary, CCPOA and the Department had agreed to a staffing level for the supervision of Mental Health Crisis Bed (MHCB) inmates. During the bargaining session held on March 11, 2004, Ms. Samaniego discontinued the hiring of all staffing for MHCB inmates. She also directed that all staffing associated with administrative segregation (ad-seg) inmate patients be eliminated. The ad-seg positions had been in place even before the temporary relocation of the infirmary.

After two hours of argument, Ms. Samaniego informed CCPOA the ad-seg positions were not budgeted. In response to this statement, CCPOA verbally requested a document called either a Monthly Budget Plan or Budget Summary Plan. Ms. Samaniego responded that the document was immaterial to the parties' discussion and it would not be provided.

During several additional bargaining sessions, Ms. Samaniego rejected all Union proposals without comment or discussion and agreed only to proposals initiated by the Department. On April 22, 2004, Ms. Samaniego declared the parties were at impasse. A mediation session was held on June 30, 2004.

Based on the facts stated above, the charge does not state a prima facie case.

Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) Therefore, the charging party bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

The charge was filed on October 21, 2004. Thus, the statutory limitations period extends six months prior to the filing of the charge to April 21, 2004. Accordingly, only alleged unfair practices that occurred on or after April 21, 2004, are timely filed.

The charge alleges that the Department failed to bargain in good faith during impact negotiations, unilaterally changed the staffing levels for the supervision of MHCB and ad-seg inmates, and refused to provide relevant and necessary information. The charge states that this conduct occurred in March 2004. On March 9, 2004, Ms. Samaniego rejected all tentative agreements and the ground rules. On March 11, 2004, Ms. Samaniego unilaterally changed the staffing levels and refused to provide the requested information. As this conduct occurred outside the statutory limitations period, the charge is untimely filed and must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before April 21, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robin W. Wesley
Regional Attorney